



U.S. Department of Justice

Environment and Natural Resources Division

DJ#90-5-2-1-07823

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FOR SETTLEMENT DISCUSSIONS ONLY
NOT ADMISSIBLE AS EVIDENCE UNDER FED. R. EVID. 408

October 23, 2006

VIA ELECTRONIC & U.S. MAIL

Scott R. Dismukes
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219-2788

Re: **In Re: S.H. Bell Company, East Liverpool, Ohio,**
Civil Penalty Issues

Dear Scott:

This responds to your letter of October 3, 2006, in which you set forth S.H. Bell Company's ("S.H. Bell") written proposal for settlement discussed at our meeting in Cleveland, Ohio on September 25, 2006. S.H. Bell's proposal includes payment of a baseline civil penalty in the amount of \$150,000, to be mitigated by the value of up to two Supplemental Environmental Projects ("SEP") in accordance with U.S. EPA's SEP Policy. We sincerely appreciate S.H. Bell's efforts in seeking to resolve this matter through settlement and are encouraged by the proposal for settlement stated in your letter.

Although the two proposed SEPs briefly described in your letter indeed appear to create a potential for improvement of ambient air quality in the local community, U.S. EPA would require more detail to evaluate the mitigation potential and amount for these SEPs that would be applicable under settlement terms in this case. U.S. EPA will require, without limitation, engineering and cost details, as well as, pollution reduction estimates supported by engineering details and S.H. Bell's agreement to exclude such pollution reduction from the SEPs in any future netting considerations regarding S.H. Bell's East Liverpool, Ohio, Little England and Stateline plants. I believe you recognize this in your October 3rd letter, and we anticipate that S.H. Bell will furnish such necessary information before we can arrive at an agreement in principle in this case. In connection with the netting restriction issue, on October 2, 2006, we

provided you with internet links to previous Government settlements in which such netting restriction terms were included in the settlement document, as well as information regarding U.S. EPA's economic benefit calculations.

S.H. Bell's baseline civil penalty delineated in your letter, however, is an amount we cannot recommend to our management at U.S. DOJ and U.S. EPA. Accordingly, this letter addresses the Government's baseline civil penalty counter-proposal. In the interest of avoiding the burden, expense and distraction of litigation to the United States and S.H. Bell, and expeditiously advancing efforts toward resolution of the United States' claims in this matter, we are prepared to recommend a baseline civil penalty settlement amount of \$222,140, which in turn may be mitigated by any value of SEPs consistent with the SEP Policy and approved by U.S. EPA, following our receipt of the information discussed above from S.H. Bell. This settlement amount includes a 20% adjustment for litigation risk/good faith/cooperation. Attached hereto is the tabulated basis for our civil penalty settlement counter-proposal. We believe this amount constitutes a reasonable settlement under the circumstances, taking all equitable considerations into account. We considered the arguments in your letter for the \$150,000 baseline civil penalty amount detailed in your letter and address them below.

FESOP Permit Violations. It is undisputed that S.H. Bell's application for operating permits was submitted to Ohio EPA on August 28, 2002. Prior to that date, U.S. EPA alleges that S.H. Bell was operating without a permit in violation of the Clean Air Act requirements. Moreover, it is undisputed that S.H. Bell was required to submit separate applications for the Stateline and Little England plants, and also was required to submit separate state applications for operations at Stateline conducted in Ohio and Pennsylvania. Accordingly, we see no basis for combining what in fact are separate claims for alleged violations in two separate states. In the interest of bringing this issue to a swift conclusion, we are prepared to recommend to our management that, subject to issuance of valid FESOP or Title V permits by Ohio and Pennsylvania, the settlement resolves all alleged outstanding violations of the facility operating permit requirements for both major and minor sources, providing that all remaining claims against S.H. Bell are acceptably resolved in the settlement.

Hammermill Baghouse Installation. We have accepted S.H. Bell's actual installation cost figure for the Hammermill baghouse of \$63,465.65, and recalculated the economic benefit figure. We cannot agree, however, to eliminate the individual \$5000 penalty claim for failure to meet a permit deadline because this allegation goes to the heart of the violation we allege with regard to the failure to meet permit to install deadlines at the Hammermill. U.S. EPA's interpretation of the permit's requirements dictate that a penalty be assessed for this violation. S.H. Bell has offered no evidence that the delayed installation of the baghouse was approved or otherwise sanctioned by the Ohio EPA.

NSPS OOO Violations. We see no basis to collapse any of the individual penalty calculations for this violation. U.S. EPA's regulations at 50 Fed. Reg. 31328 (August 1, 1985) make clear that the regulations at 40 C.F.R. Part 60 Subpart OOO, are applicable to "each" affected facility at the source, including those that are the basis for U.S. EPA's claim, three

separate conveyors, single deck screen, storage bin and Hammermill. However, we have changed the penalty claim associated with compliance testing from a failure to test claim to a late performance testing claim, and have deleted the failure to notify claim from the penalty calculation.

SEP Mitigation. Pending submission and evaluation of the detailed information regarding S.H. Bell's proposed SEPs, this baseline civil penalty amount may be mitigated by an appropriate amount warranted by the U.S. EPA SEP Policy.

Terms of final settlement must, of course, be incorporated in a consent decree with other approved provisions and be approved by appropriate U.S. DOJ and U.S. EPA management officials. Again, we appreciate your willingness, on behalf of S.H. Bell, to engage in discussions directed toward resolving the United States' claims in this case and the serious efforts to achieve a resolution of the Government's concerns. We are hopeful that discussions over settlement terms can continue to advance.

Please let me know your preference for a date and time for a followup telephone conference to address the issues raised in this letter, and when S.H. Bell will provide details regarding the proposed SEPs. As you know, the tolling agreement in this matter expires on November 16, 2006. Although we have made extraordinary progress in resolving this matter short of litigation, we may consider a reasonable extension of the tolling period in order to bring matter to closure. If there are any questions regarding the matters discussed herein, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Francis J. Biros". The signature is fluid and cursive, with the first name "Francis" being the most prominent part.

Francis J. Biros
Trial Attorney

cc: Steven Paffilas, Assistant U.S. Attorney, N.D. Ohio
John Matson, U.S. EPA, Region 5
Charmagne Ackerman, U.S. EPA. Region 5

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S. H. Bell Penalty Summary

I.	FESOP Permit Violations		
A.	Pennsylvania and Ohio FESOP		
I.	Economic Benefit Component		\$ 5,074
ii.	Gravity Component		\$ 90,000
	Pennsylvania FESOP Permit	(12/31/00 – 8/28/02)	
	Ohio FESOP Permit Stateline	(12/31/00 – 8/28/02)	
	Ohio FESOP Permit Little England	(12/31/00 – 8/28/02)	
	Subtotal		\$ 95,074
II.	PTI Violations		
A.	Failure to have a PTI		
I.	Economic Benefit Component		\$ 0
ii.	Gravity Component		\$ 15,000
	Boxing and Bagging System	(1997 – 7/24/01)	
	Subtotal		\$ 15,000
	B.	Failure to install new baghouse on Hammermill	
	I.	Economic Benefit Component (cost of new baghouse)	\$ 6,401
	ii.	Gravity Component	\$ 17,000
		Baghouse Installation	(12/2000 – 5/2001)
		Subtotal	\$ 23,401
III.	NSPS Violations		
A.	Failure to comply with NSPS OOO		
I.	Economic Benefit Component		\$ 0
ii.	Gravity Component		\$110,000
	Length of Violation for NSPS OOO		
	Conveyor from TP#2 to TP#3	(1994 – 7/01)	
	Conveyor from TP#4 to TP#5	(1994 – 7/01)	
	Conveyor from TP#7 to TP#8	(1994 – 7/01)	
	Single Deck Screen	(1994 – 7/01)	
	Storage Bin	(1994 – 7/01)	
	Hammer Mill	(1994 – 7/01)	
	Subtotal		\$110,000
IV.	Size of Violator		
	S.H. Bell's net worth is unknown but is estimated to be between		\$ 10,000
	\$1,000,000 – 5,000,000		
	Subtotal		\$ 10,000
	Totals	I.	\$ 95,074
		II.	\$ 38,401
		III.	\$110,000
		IV.	<u>\$ 10,000</u>
			\$253,475
V.	Inflation Adjustment of Gravity Component		
	Gravity + 10% increase		\$277,675
VI.	Other Adjustments (-20%-litigation risk/good faith/cooperation)		(\$ 55,535)
		Adjusted Total:	\$222,140